

REMARKS/ARGUMENTS

These remarks are submitted in response to the Office Action dated September 20, 2007 (Office Action), and are concurrently being filed with a Request for Continued Examination. The Examiner is expressly authorized to charge any incurred fees to Deposit Account 50-0951.

Claims 1, 3-6, 7-13, 16, and 18-24 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Published Patent Application No. 2001/0039514 to Barenbaum (hereinafter Barenbaum). Claims 2 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Barenbaum, in view of U.S. Patent No. 6,611,811 to Deaton (hereinafter Deaton).

Although Applicants respectfully disagree with the rejections, Applicants nevertheless have amended each of the independent so as to expedite prosecution of the present application by emphasizing certain aspects of the invention. Applicants respectfully note, however, that the amendments are not intended as, and should not be interpreted as, the surrender of any subject matter. Accordingly, Applicants respectfully reserve the right to present the original version of any of the amended claims in any future divisional or continuation applications from the present application.

The claim amendments, as discussed herein, are fully supported throughout the Specification. No new matter has been introduced by virtue of any of the claim amendments.

Claim Amendments

Applicants' invention is directed to systems and related methods for providing promotional material to consumers. One aspect of the invention, as recited in the independent claims, is determining that at least one merchant-specified product is an obsolete product whenever a new or alternate version of the merchant-specified product becomes available or is expected to be available within a predetermined time period.

When this determination is made, which of one or more potential consumers previously purchased the now-obsolete products can be identified. Applicants have amended each of the independent claims to emphasize that the determination is made based upon predetermined attributes of the product, which indicate its obsolescence. Because the product's obsolescence, determined on the basis of predetermined product attributes, is not related to a merchant's inventor, the determination is made irrespective of merchant inventories. (See, e.g., Specification, paragraph [0026], lines 13-24.)

The Claims Define Over The Cited References

As already noted above, independent Claims 1, 10, and 16 were each rejected as being anticipated by Barenbaum. Barenbaum is directed to a system and method for "alerting potential customers to the availability of digital deals." (Barenbaum, paragraph [0018], lines 1-5.) Applicants respectfully submit, however, that Barenbaum fails to teach or suggest every feature recited in Claims 1, 10, and 16.

For example, Barenbaum does not look to any inherent aspect or attributes of a particular product in order to determine the product's obsolescence. Instead, Barenbaum focuses on a merchant's inventory of a product for determining when to provide consumers with promotional material related to that product. This inventory-focused determination is explicitly described in Barenbaum:

The present invention enables clients, such as service or product providers, to effectively and efficiently manage excess, unfulfilled capacity by inducing purchaser or consumer response to satisfy the excess capacity, such as by offering incentives to purchase unused seats or perishable goods, for example. Target markets may include movie theatres/studios, sports teams, live entertainment venues and other events that naturally expire with the occurrence of the event itself or goods or services that would go unpurchased with the closing of a retail outlet, e.g., video rentals. Other

examples may include flights, cruises and other activities that are time sensitive. This could also include a service or good that has a series of time-sensitive availability due to such things as the regular operating hours of a retail outlet. For example, a grocery may have an over-stocked inventory of strawberries that are ripe and will be worthless in a few days. A bar may be experiencing a slow night and may create an event to fill up the bar's capacity and generate more revenue. A women's clothing store may be approaching the end of the summer season with an abundant supply of summer dresses and sandals.

As explicitly described, Barenbaum's determination is based upon unfulfilled capacity by inducing purchaser or consumer response to satisfy the excess capacity. The supplier's capacity is central to the determination made by Barenbaum. An over-stocked inventory of strawberries is focused only on a supplier's inventory. So, too, an anticipated over abundance of summer dresses and sandals is focused exclusively on the supplier's inventory.

As recited in the claims, however, Applicants' invention is able to make a determination that leads to actions regarding promotional activity irrespective of a producer's inventories. Instead, Applicants' invention allows for determination based upon predetermined product attributes irrespective of merchant inventories.

Accordingly, Barenbaum fails to teach, expressly or inherently, every feature recited in independent Claims 1, 10, and 16. Applicants respectfully submit, therefore, that Claims 1, 10, and 16 define over the prior art. Applicants further respectfully submit that, whereas each of the remaining claims depends from Claim 1, 10, or 16 while reciting additional features, each of the dependent claims likewise defines over the prior art.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

Date: October 31, 2007

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